98.

SUPREME COURT OF THE UNITED STATES.

No. 88.

GEORGE SMITH, PLAINTIFF IN ERROR,

vs.

WM. TURNER, HEALTH COMMISSIONER FOR THE PORT OF NEW YORK.

IN ERROR TO THE COURT FOR THE TRIAL OF IMPEACHMENTS AND CORRECTION OF ERRORS.

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J. & G. S GIDEON, printers.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the President of the Senate and Senators, the chancellor, and the judges of the Supreme Court, in the court for the trial of impeachments and the correction of errors of the State of New York, greeting:

Because in the record and proceedings, as also in the rendition of a judgment, in a plea which is in the said court for the trial of impeachments and the correction of errors, before you, between Geo. Smith, plaintiff in error, and Wm. Turner, health commissioner of the port of New York, defendant in error, a manifest error hath occurred, to the great damage of the said George Smith, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, esquire, Chief Justice of the said Supreme Court of the United States, this second Monday of January, in the year of our Lord one thousand [L. S.] eight hundred and forty-three, and of the independence of the United States the sixty-seventh.

J. W. METCALF,
Clerk of the U. S. for the southern dist. of New York in the second circuit.

The answer of the President of the Senate, Senators, chancellor, and judges of the Supreme Court, in the court for the trial of impeachments and the correction of errors within named, to the within writ, appears by the schedule hereto annex-[L. S.] ed, containing a transcript of the record and proceedings whereof mention is within made, which we certify, under the seal of our said court for the trial of impeachments and correction of errors, at the day and place within contained, as within we are commanded.

By the court: ISAAC R. ELWOOD, *Clerk.*

THE UNITED STATES OF AMERICA,

To William Turner, health commissioner of the port of New York:

Whereas George Smith lately issued out of the Supreme Court of the United States a writ of error, directed to the President of the Senate, Senators, chancellor, and judges of the Supreme Court, in the court for the trial of impeachments and the correction of errors of the State of New York, stating that, in the record and proceedings, as also in the rendition of the judgment of a plea in the said court, before the judges thereof, between the said George Smith, plaintiff in error, and the said William Turner, health commissioner of the port of New York, defendant in error, a manifest error hath happened, to the great damage of the said plaintiff: And whereas, for the correction of that error in due manner the said writ has been issued, returnable at the next stated Supreme Court of the United States, to be held at the capitol in the city of Washington, in the District of Columbia, on the second Monday of January next, you are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington on the said second Monday of January next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of Baltimore, in the district of Maryland, in the fourth circuit, the twenty-second day of December, in the year of our Lord one thousand eight hundred and forty-three, and of the independence of the United States the sixty-eighth.

R. B. TANEY.

Due service of the above citation is admitted.

JAMES HUMPHREY,

Att'y for deft. in error in this court and in the court below.

Dated December 26, 1843.

Writ of error.

The people of the State of New York, to the justices of the supreme court of judicature, greeting:

Because in the record and proceedings, and also in the giving of judgment in a certain cause, which was in our said court before you, between Wm. Turner, health commissioner, &c., plaintiff, and George Smith, defendant, in a plea of debt as is said, manifest error hath intervened to the great damage of the said George Smith, as he complains; and we being willing that the error, if any, should be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given, then without delay you distinctly and openly send, under your seal, a transcript of the record of that judgment, and of all proceedings aforesaid, with all things touching or any wise concerning the same, to our President of our Senate, our Senators, and our chancellor, at the capitol in the city of Albany, immediately, together with this writ, that the record and proceedings aforesaid

being inspected, we may cause to be done thereupon, for correcting that error, what of right ought to be done.

Witness Luther Bradish, esquire, our President of our Senate, at the capitol in the city of Albany, the thirtieth day of September, one thousand eight hundred and forty.

ISAAC R. ELWOOD, *Clerk.*
ZABRISKIE, *Attorney.*

I allow the within writ of error; and the proper bond having been executed according to the statute, let all proceedings on the execution upon the judgment within referred to, if one shall have been issued, or the issuing an execution thereon, if none have been issued, be stayed, until judgment shall be rendered on the within writ of error.

WILLIAM KENT, *Circuit judge.*

Dated New York, October 4, 1842.

The answer of the justices of the supreme court within named, a transcript of the record whereof mention is within made, we certify, under the seal of our said court, to the President of the Senate, the Senators, and chancellor, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed, as within we are commanded by the court.

[L. S.] WM. P. HALLETT, *Clerk.*

SUPREME COURT.

Pleas before the justices of the supreme court of judicature of the people of the State of New York, at the academy in the city of Utica, of the term of July, in the year of our Lord one thousand eight hundred and forty-one. Witness Samuel Nelson, esquire, chief justice, Hallett, Paige, Denio, and Sutherland, clerks.

CITY AND COUNTY OF NEW YORK, *ss:*

Be it remembered that, in the present term of July, before the justices of the supreme court of judicature of the people of the State of New York, at the academy in the city of Utica, comes William Turner, health commissioner, by James Humphrey, his attorney, and brings into the said court, before the aforesaid justices thereof now here, his certain bill against George Smith, of a plea of debt; which said bill follows in these words, to wit:

CITY AND COUNTY OF NEW YORK:

William Turner, health commissioner, plaintiff in this suit, by James Humphrey, his attorney, complains of George Smith, defendant, being in custody, &c., of a plea, that he render to the said plaintiff the sum of six hundred dollars, of lawful money of the United States of America, which he owes to and unjustly detains from him: For that whereas the said plaintiff, before and at the time of the accruing of the indebtedness hereinafter mentioned, held, enjoyed, and exercised, and now holds, enjoys, and exercises,

the office of health commissioner of the city of New York, and as such health commissioner, as aforesaid, was, and is, entitled, pursuant to the statute in such case made and provided, to demand and receive from the master of every vessel from a foreign port, that should arrive in the port of the city of New York, for each steerage passenger brought in such vessel the sum of one dollar; and thereupon, while the said plaintiff held, enjoyed, and exercised the said office of health commissioner, as aforesaid, to wit, on the twenty-fifth day of June, in the year 1841, at the city and within the county of New York aforesaid, he, the said defendant, was master of the vessel or ship "Henry Bliss;" and the ship or vessel "Henry Bliss" arrived in the said port of the city of New York from a foreign port, the said defendant commanding the same as master thereof, and brought a large number, to wit, two hundred and ninety-five steerage passengers, to wit, on the day and at the place last aforesaid. And by reason of the premises, by force of the statute in such case made and provided, the said defendant became liable to pay to the said plaintiff, health commissioner as aforesaid, a large sum of money, to wit, the sum of two hundred and ninety-five dollars, of lawful money of the United States of America, when the same should be demanded, to wit, at the time and at the place last aforesaid; (and the said plaintiff avers that he demanded the payment of the said sum of money of the said defendant, to wit, at the time and place aforesaid,) but to pay the same, or any part thereof, the said defendant then and there neglected and refused, and hath ever since hitherto utterly neglected and refused, whereby, and by force of the statute aforesaid, an action hath accrued to the said plaintiff, health commissioner as aforesaid, to demand and have of, and from, the said defendant the said sum of two hundred and ninety-five dollars, parcel of the said sum above demanded. And whereas also the said plaintiff, before and at the time of the arrival of the ship aforesaid, and of the steerage passengers hereinafter mentioned, in the port of New York, held, enjoyed, and exercised, and hath ever since held, enjoyed, and exercised, the office of health commissioner of the city of New York; and whereas the said defendant, at the time last aforesaid, was master of the ship or vessel "Henry Bliss," and the said plaintiff so being health commissioner, and the said defendant so being as aforesaid of the said ship or vessel "Henry Bliss," arrived in the port of New York from a foreign port, to wit, the port [of] Liverpool, in England, the said defendant commanding the same as master thereof, and brought a large number, to wit, two hundred and ninety-five steerage passengers, into the said port, and there landed the same, to wit, on the twenty-fifth day of June, in the year one thousand eight hundred and forty-one, at the city and county of New York aforesaid; and thereupon the said plaintiff, in virtue of his office of health commissioner as aforesaid, and pursuant to the statute in such case made and provided, was entitled to demand and receive of, and from, the

said defendant, master of the said ship or vessel as aforesaid, the sum of one dollar for each and every such steerage passenger so brought into the said port by the said vessel, to wit, at the time and place last aforesaid. Whereupon, by reason of the premises, and by force of the said statute, the said defendant became liable to pay to the said plaintiff, health commissioner as aforesaid, another large sum of money, to wit, the sum of two hundred and ninety-five dollars, of lawful money of the United States, being one dollar for each of such passengers, whenever the same should be demanded, to wit, at the time and place last aforesaid.

And the said plaintiff avers that he demanded the payment of the said last mentioned sum of money of, and from, the said defendant, to wit, at the time and place last aforesaid, but the said defendant then and there utterly neglected and refused, and hath ever since utterly neglected and refused, to pay the same, or any part thereof, whereby, and by the force of the statute aforesaid, an action hath accrued to the said plaintiff, health commissioner as aforesaid, to demand and have, of and from the said defendant, the said last mentioned sum of two hundred and ninety-five dollars, parcel of said sum above demanded. Yet the said defendant, although often requested so to do, hath not as yet paid the said sum of $600 above demanded, or any part thereof, to the said plaintiff; but to do this he hath wholly refused, and still doth refuse, to the damage of the said plaintiff of one hundred dollars, and therefore he brings suit, &c.

And the said George Smith, defendant in this suit, by M. R. Zabriskie, his attorney, comes and defends the wrong and injury, when, &c., and says that the said declaration, and the matters therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against the said defendant, and that the said defendant is not bound by law to answer the same; for that the statute of this State, in said declaration referred to, in pursuance of which the said plaintiff claims to be entitled to demand and receive from the said defendant the sum of money in said declaration named, is contrary to the Constitution of the United States, and void, and this he is ready to verify.

Wherefore, for want of sufficient declaration in this behalf, the said defendant prays judgment, and that the said plaintiff may be barred from having and maintaining his aforesaid action thereof against him, &c. And the said plaintiff saith that the said declaration, and the matters therein contained, in manner and form as the same are above stated and set forth, are sufficient in law for him the said plaintiff to have and maintain his aforesaid action thereof against the said defendant; and the said plaintiff is ready to verify and prove the same, as the court here shall direct and award. Wherefore, inasmuch as the said defendant hath not answered the said declaration, nor hitherto in any manner denied the same, the

said plaintiff prays judgment and his debt aforesaid, together with his damages by him sustained on occasion of the detention thereof to be adjudged to him, &c. And because the said court of the people before the aforesaid judges thereof now here, are not yet advised what judgment to give, and upon the premises therefore, the process thereof is continued between the parties aforesaid, of the place aforesaid, in this same court before the justices thereof, until the first Monday of May of the term of May, in the year one thousand eight hundred and forty-two, at the City Hall, in the city of New York. And the same day is given to the parties aforesaid, at the same place to have the judgment of the said court thereupon.

At which day before the justices aforesaid, at the City Hall, in the city of New York, come as well the said plaintiff as the said defendant, by their respective attorneys aforesaid. Whereupon, all and singular the premises aforesaid being seen, and by the said court here fully understood, and mature deliberation being thereupon had, it appears to the said court here, that the declaration aforesaid, and the matters therein contained, are sufficient in law for the said plaintiff to have and maintain his aforesaid action thereof against the said defendant.

Therefore, it is considered, that the said plaintiff do recover against the said defendant two hundred and ninety-five dollars, his said debt, and also seventy-one dollars and seventy-four cents for his damages which he hath sustained as well by occasion of the detention of said debt, as for his costs and charges by him about his suit in this behalf expended, by the court now here adjudged to the said plaintiff, with his assent.

And the said defendant in mercy, &c.

Judgment signed the 28th day of September, in the year of our Lord one thousand eight hundred and forty-two.

WM. P. HALLETT.

STATE OF NEW YORK, *ss:*

Pleas in the court for the trial of impeachments and the correction of errors, held at the Capitol, in the city of Albany, on the 25th day of November, in the year of our Lord one thousand eight hundred and forty-three, before the President of the Senate, senators, and chancellor of the State.

[L. S.]

Witness Daniel S. Dickinson, esquire, our President of our Senate.

ISAAC R. ELWOOD, *Clerk*.

GEORGE SMITH, plaintiff in error,
vs.
WILLIAM TURNER, health commissioner, defendant in error.

Be it remembered, that on the tenth day of October, in the year of our Lord one thousand eight hundred and forty-two, the transcript of the record and process between the parties aforesaid, of the plea aforesaid mentioned, with all things touching the same, on

pretext of a certain writ of error prosecuted in the premises therein mentioned by the said George Smith, were transmitted from the supreme court of judicature of this State before the court here for the correction of errors. And the aforesaid George Smith appearing by his counsel in the same court for the correction of errors, on the same day and in the year last aforesaid, did assign certain matters for errors in the said record and process aforesaid, for reversing and annulling the judgment aforesaid of the said supreme court in the words following, to wit:

Afterwards, that is to say, on the eleventh day of October, in the year one thousand eight hundred and forty-three, before the President of the Senate, senators, and chancellor of the State of New York, in the court for the trial of impeachments and the correction of errors, at the Capitol in the city of Albany, comes the said George Smith, by M. R. Zabriskie, his attorney, and William T. Johnson, of counsel, and say, that in the record and proceedings aforesaid, and in giving the judgment aforesaid, there is manifest error in this, to wit, that the declaration aforesaid, and the matters therein contained, are not sufficient in law for the said William Turner, health commissioner, &c., to have or maintain his aforesaid action thereof against the said George Smith; and there is also error in this, to wit, that the judgment aforesaid, by the record aforesaid, appears to have been given for the said William Turner, health commissioner, &c., against the said George Smith; whereas by the law of the land, the said judgment ought to have been given for the said George Smith against the said William Turner, health commissioner, &c., and the said George Smith prays that the judgment aforesaid, for the errors aforesaid, and for other errors in the said record and proceedings being, may be reversed, annulled, and altogether holden for nothing, and that he may be restored to all things which he has lost by occasion of the said judgment.

To which the said William Turner, health commissioner and defendant in error, likewise appearing by his counsel in the same court for the correction of errors, on the seventeenth day of October, in the year one thousand eight hundred and forty-two aforesaid, filed his plea to the error assigned in the words following, to wit:

And hereupon, afterwards, to wit, in the same term, in the year of our Lord one thousand eight hundred and forty-two, before the President of the Senate, senators, and chancellor of the State of New York, in the court for the correction of errors, at the Capitol in the city of Albany, the said defendant in error, by James Humphrey, his attorney, freely come here into court and say, that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and he prays that the said court, before the President of the Senate, senators, and chancellor of the State of New York, now here, may proceed to examine as well the record and proceedings aforesaid, as the matter aforesaid above assigned for error, and that the judgment aforesaid, in the form aforesaid given, may be in all things affirmed, &c.

Whereupon, the said court for the correction of errors after having heard the counsel for both parties, and diligently examined and fully understood the causes assigned for error, and inspected the record and process aforesaid, did order and adjudge, that the judgment of the Supreme Court in this cause be in all things affirmed. And the said court did further order and adjudge, that the defendant in error recover against the plaintiff in error, his costs in this court to be taxed, and interest on the judgment in the court below by way of damages. And it was further ordered, that the record and proceedings be remitted to the Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered, that the judgment of the Supreme Court aforesaid be in all things affirmed.

And hereupon, the record and proceedings, and also the judgment aforesaid, are remitted to the Supreme Court, there to be proceeded upon according to law.

ISAAC R. ELWOOD, *Clerk*.

In the court for the trial of impeachments and correction of errors.

GEORGE SMITH, plaintiff in error,
vs.
WILLIAM TURNER, health commissioner, defendant in error.

STATE OF NEW YORK, *ss:*

I, Isaac R. Elwood, clerk of the court for the trial of impeachments and correction of errors, do hereby certify to the Supreme Court of the United States, that the judgment record, assignment of errors, and joinder in error, hereunto annexed, are true transcripts of their respective originals remaining on file in my office in the above entitled cause, together with a copy of the judgment of the aforesaid court thereupon.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said court, this twenty-eighth [L. S.] day of December, 1843.

ISAAC R. ELWOOD, *Clerk*.

SUPREME COURT OF THE UNITED STATES:

GEORGE SMITH, plaintiff in error,
vs.
WILLIAM TURNER, health commissioner, &c.

We consent that the above cause be put on the calendar for the term of January, 1844, and request the clerk accordingly.

New York, January 2, 1843.

M. R. ZABRISKIE,
Attorney for plaintiff in error.
JAMES HUMPHREY,
Attorney for defendant in error.

SUPREME COURT OF THE UNITED STATES:

GEORGE SMITH, plaintiff in error,
vs.
WILLIAM TURNER, health commissioner of the port of New York.

Assignment of error, on judgment of the court for the correction of errors of the State of New York.

And afterwards, to wit, on the second Tuesday of January of the term of January, in the year one thousand eight hundred and forty-four aforesaid, before the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, comes the said George Smith, plaintiff in error, by M. R. Zabriskie, his attorney, and says, that in the record aforesaid, and in the proceedings aforesaid, and also in giving the judgment aforesaid, in the court for the trial of impeachments and the correction of errors of the State of New York, there is manifest error in this, to wit, that the declaration aforesaid, and the matters therein contained, are not sufficient in law for the said William Turner to have or maintain his aforesaid action thereof against the said George Smith; and there is also error in this, to wit, that by the record aforesaid, it appears that the judgment aforesaid, in form aforesaid given, was given for the said William Turner against the said George Smith, whereas by the law of the land the said judgment ought to have been given for the said George Smith against the said William Turner. And the said George Smith prays that the judgment aforesaid, for the errors aforesaid, and for other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing: and that he may be restored to all things which he has lost by occasion of the said judgment, &c.

M. R. ZABRISKIE,
Attorney for plaintiff in error.
D. B. OGDEN, *of counsel.*

SUPREME COURT OF THE UNITED STATES:

WILLIAM TURNER, health commissioner of the port of New York, defendant in error,
ads.
GEORGE SMITH, plaintiff in error.
} Joinder in error.

And hereupon, afterwards, to wit, on the second Tuesday of January, in this same term of January, the said William Turner, health commissioner of the port of New York, by James Humphrey, his attorney, freely comes here into court, and says that there is no error, either in the record and proceedings aforesaid, or in giving the judgment aforesaid; and he prays that the said justices of the Supreme Court of the United States now here, may proceed to examine as well the record and proceedings aforesaid, as the matters

aforesaid above assigned for error; and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

JAMES HUMPHREY,
Attorney for defendant in error.
B. W. BONNEY, *of counsel.*

GEORGE SMITH, plaintiff in error,
vs.
WILLIAM TURNER, health commissioner of the port of New York, defendant in error.

In error—Bond for costs.

Know all men by these presents, that we, John J. Boyd and James Lee, both of the city and county of New York, merchants, are held and firmly bound unto the abovenamed William Turner, health commissioner of the port of New York, in the sum of thirteen hundred dollars, to be paid to the said William Turner, or to his executors, administrators, or assigns, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the fourth day of December, in the year of our Lord one thousand eight hundred and forty-three.

Whereas the abovenamed plaintiff hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered by the President of the Senate, the senators, and chancellor of the State of New York, judges of the court for the trial of impeachments and the correction of errors of the said State, in a certain cause wherein George Smith is plaintiff in error, and the said William Turner, health commissioner, &c., is defendant in error, in said court pending.

Now, therefore, the condition of this obligation is such, that if the abovenamed plaintiff shall prosecute his said writ to effect, and answer all damages and costs, if he fail to make his plea good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

J. J. BOYD, [SEAL.]
JAMES LEE. [SEAL.]

Sealed and delivered in the presence of—
M. R. ZABRISKIE,
GEO. W. MORTON.

I approve the within bond.

JAMES HUMPHREY,
Attorney for defendant in error.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

John J. Boyd being duly sworn says, that he is a householder in the city of New York, and is worth the sum of twenty-six hundred dollars over and above his just debts and liabilities.

J. J. BOYD.